negligence by alleging that the windscreen of his car had suddenly shattered and that he could not see anything through it. He however gave no explanation and made no attempt to give any as to the cause of the shattering. He left the court in the dark to guess whether the windscreen which might have already been defective was shattered by excessive vibrations of the car due to the speed in which it was travelling or whether the body of the cyclist had been thrown on to the bonnet of the car and smashed the windscreen or whether it had been hit by other flying objects. But one thing was however clear. After the windscreen was shattered the defendant did not or could not stop the car for a distance of 75 yards before knocking down the cyclist who was cycling on his correct side of the road and going in the same direction as the defendant. His car left a brake mark of 117 feet long on the road! Judging from the evidence it is without doubt that the car must have been travelling at some speed not consistent with safety of other persons lawfully using the road.

The defendant admitted under cross-examination that Jalan Ampang was a very busy highway crowded with cyclists, pedestrians and cars, and that at the time when his car knocked down the cyclist he knew there would be cyclists cycling on the side of the road. He further admitted that if his car was travelling at 30 — 35 miles per hour as he had claimed, he could have pulled up his car within 75 feet instead of 75 yards.

His car was badly damaged. The windscreen was shattered, the front right side lamp was completely smashed, the front right bumper was bent inwards and the middle part of the bonnet of the car was dented, which would indicate that some object must have fallen against the bonnet. We do not know whether the cyclist had or had not been thrown upon the bonnet and smashed the windscreen by the force of the impact of the car on him. According to the evidence of the police sergeant who investigated into the case, pieces of the shattered windscreen were found scattered inside the car as well as on the road around the car covering a large area. The damage to the car, and the places where the pieces of the shattered windscreen were found indicated that the force of the impact was considerable. The rear portion of the deceased's bicycle was badly damaged.

Applying the principles laid down in *The Merchant Prince*,[3] I hold that the defendant John Flower had failed to discharge the onus placed upon him to show that the cause of the accident was a cause not produced by him and the result of which he could not avoid.

On the evidence before me and after hearing the witnesses, I find as a fact that the defendant was guilty of negligence in driving his car at a speed which in the circumstances of this case was excessive and in failing to stop his car in time to avoid running into the cyclist who was travelling on his proper side of the road.

In the light of my findings, I give judgment for the plaintiffs in the sum of $14,000 (the amount of which was agreed by both counsel) and costs. The said sum is to be deposited into court pending application by the plaintiffs to distribute it to the persons entitled thereto.

*Judgment for the plaintiffs.*

Solicitors: *Rajendra & Teik Ee; Skrine & Co.*

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## LAW KIAT LONG & ORS. v. PARDONS BOARD, JOHORE & ORS.
## OIE HEE KOI & ORS. v. PARDONS BOARD, JOHORE & ORS.

**[O.C.J. (Ali J.) August 8, 1968]**
**[Johore Bahru — Motions Entered Nos. 24 and 25 of 1968 in Civil Suit Nos. 202 and 203 of 1968]**

*Internal Security — Conviction for capital offences under Internal Security Act, 1960 — Appeal for clemency to Pardons Board — Injunction to Superintendent of Prisons pending execution — Whether court has power to grant declaration and injunction in such cases.*

*Government Proceedings — Whether court can grant declaration and injunction — Government Proceedings Ordinance, 1956, s. 29(2) — Specific Relief Ordinance, 1950, s. 54(d) — Effect of.*

The plaintiffs claimed in these two motions various reliefs in the form of declarations following the rejection of their petitions for clemency or pardons for capital offences under the Internal Security Act 1960 to the Ruler of the State of Johore. They also sought an interim injunction against the seventh defendant the Superintendent of Prisons from carrying into effect any warrant of execution which may have been directed to him.

**Held:** (1) the court has no jurisdiction to entertain the claim for an interim injunction in view of section 29(2) of the Government Proceedings Ordinance and section 54(d) of the Specific Reliefs (Malay States) Ordinance 1950;

(2) there was no principle or authority supporting the proposition that the court had the inherent jurisdiction to make an interim declaration;

(3) no order should be made on either of the two motions.

*Case referred to:—*

(1) *Underhill* v. *Ministry of Food* [1950] 1 All E.R. 591.

MOTIONS.

*P. G. Lim* for the 7 plaintiffs in Civil Suit 202 of 1968.

*Sim Teow Gok* for the 4 plaintiffs in Civil Suit No. 203 of 1968.

*Ajaib Singh* (Senior Federal Counsel) for the 7th defendant in both cases.

Ali J.: I shall deliver an oral judgment.

In both these actions the plaintiffs by their writs of summons claim certain declarations against the members of the Johore Pardons Board following the rejection of their petitions for clemency or pardon to the Ruler of the State. The plaintiffs also claim an injunction against the Superintendent of Prisons, Pudu Jail, Kuala Lumpur, where they are at present detained upon their convictions for capital offences under the Internal Security Act, 1960. The unusual feature common to both cases is that different reliefs are sought against different defendants in the same proceedings so that a situation may well be created in which the Superintendent of Prisons will be restrained from performing his duty for an indefinite length of time pending the final determination of the dispute between the plaintiffs and the members of the Pardons Board. As far as I can see the injunction may even be perpetuated if, having obtained the declaration, the plaintiffs decide to do nothing further. In the light of these possibilities and in the absence of any evidence suggesting the possibility of pardon being granted by the Ruler in the near future, it would be an abuse of the power of the court to grant an injunction, assuming that such power exists.

Coming to the several points raised in these motions for interim reliefs, it must be stated at once that grave though this matter is, this court can do no more than apply the law as it should be applied to applications made in similar form.

The main interim relief asked for in these applications is a temporary injunction to restrain the Superintendent of Prisons, Pudu Jail, the 7th defendant, from carrying into effect any warrant of execution which may have been or may be directed to him. It has been submitted that notwithstanding the prohibitory effect of section 29(2) of the Government Proceedings Ordinance, 1956, this court can grant this relief. The ground for this contention was that although the 7th defendant is an officer of the Government, the duty to be affected by the injunction is not one which arises from an order of Government to render it possible to say that if such a relief is claimed against the Government, it cannot be obtained by reason of section 29(1)(a) of the same Ordinance. I am unable to find anything in section 29(2) which limits the prohibition only to officers performing duties on the direct order or orders of Government. Nor can I find any justification for the view that the position of the Superintendent of Prisons is the same as that of the Sheriff in execution proceedings concerning disputes over property. Section 29(2) is *in pari materia* with section 21(2) of the English Crown Proceedings Act, 1947, which according to Romer J. in the case of *Underhill* v. *Ministry of Food* [1] (I quote) "is quite plain that, in so far as the motion was founded on a claim for an injunction, this court would have no jurisdiction to entertain it." That this is so in this country is even more plainly stated in section 54(d) of the Specific Reliefs (Malay States) Ordinance No. 29 of 1950 which says:—

> "An injunction cannot be granted to interfere with the public duties of any department of any Government in the Federation. . . ."

It was then submitted that if an interim injunction cannot be granted then this court should consider granting an alternative form of relief which is an interim declaration. A similar situation arose in the case of *Underhill* v. *Ministry of Food* already referred to and the decision there was that such a declaration could not be granted by the court. The headnote to this case states:—

> "The reference in the Crown Poceedings Act, 1947, section 21(1)(a), to a declaration of the rights of the parties in lieu of an injunction related to a final declaration, and had no application where interlocutory relief was sought, and, therefore, the court had no jurisdiction under that section to make the order asked for."

Counsel for the plaintiffs in the present motions sought to avoid the effect of this decision by submitting that the interim declaration sought here is not against the same party or parties in respect of whom the final declaration is claimed. I fail to see how this can assist the plaintiffs. They either rely on provisio (a) of section 29(1) of the Government Proceedings Ordinance or they do not. From the submission which followed it seems that they do not for it has been said that this court has the inherent jurisdiction to grant the interim relief to avoid inflicting irreparable loss or injury on the plaintiffs who, if denied the relief, will cease to exist and be unable to pursue the main relief against the members of the Pardons Board. The passages from *Basu's* Law of Injunctions, which have been drawn to my attention, cover or seem to cover cases relating to injunctions. There cannot be any inherent jurisdiction when there exists express statutory prohibition against jurisdiction. I am not aware of any principle or authority supporting the proposition that this court has the inherent jurisdiction to make an interim declaration which, as stated by Romer J. in *Underhill* v. *Ministry of Food* would have no legal effect.

On behalf of the 1st and 2nd plaintiffs in Civil Suit No. 203 of 1968 it has been submitted that the decision of the Federal Court of Appeal in allowing their appeals against conviction and sentence is to be regarded as an order of acquittal. Upon this view it was contended to the

effect that by necessary implication section 64(2) of the Courts of Judicature Act, 1964, operates to prevent the reversal of such order of acquittal regardless of the fact that the judgment of the Federal Court of Appeal has been reversed by the Judicial Committee of the Privy Council. As I am not asked to construe this sub-section but to take it into consideration as a factor which might influence the decision of the Pardons Board, I shall say nothing more about it except to state that the question is hardly relevant to the consideration of the present applications. Nor would it be relevant to consider the additional facts which disclose that formalities for deprivation of citizenship and arrangements for banishment have been completed against the 2nd plaintiff or are in the process of being completed against the 1st plaintiff. These matters will, no doubt, be given the consideration they deserve at the proper time and at the proper place. For the present the decision of this court is that no order is made on either of the two motions, but there will be an order that the costs in each case shall be in the cause.

*No order on the motions.*

Solicitors: *P. G. Lim; Sim Teow Gok.*

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## WAI HIN TIN MINING CO. LTD. v. LEE CHOW BENG

**[O.C.J. (Chang Min Tat J.) August 29, 1968]**
**[Ipoh — Civil Suit No. 7 of 1967]**

*Companies — Loan by company for purchase of company shares — Loan contrary to articles of company and Companies Ordinance, 1940 — Defence not raising illegality — Whether court could take cognisance of illegality — Companies Ordinance, 1940, ss. 47 and 48.*

*Practice and Procedure — Pleadings — Defence not pleading illegality — Whether court could take cognisance of.*

The plaintiffs claimed the repayment of an interest free loan of $2,500 lent by the plaintiffs to the defendant at the latter's request to enable the defendant to purchase shares in the plaintiff company. Evidence of the loan was a general voucher signed by the defendant. The defendant denied the loan and averred that the issue of shares to him was in consideration of services rendered by him to the plaintiff company. As for the voucher the defence was *non est factum*. The defendant did not object to the legality or enforceability of the loan.

**Held:** (1) on the evidence it was clear that the 2,500 shares were the reward made to the defendant for services rendered to the plaintiff company and the claim should be dismissed on the facts;

(2) the plaintiffs' claim was founded on an illegality as the loan was made from the company's funds in contravention of article 5 of the company's articles of association and certain provisions of the Companies Ordinance. The court could take notice of the illegality although it was not pleaded by the defendant.

*Cases referred to:—*

(1) *Scott* v. *Brown, Doering, McNab & Co.* [1892] 2 Q.B. 724.

(2) *Gedge & Ors.* v. *Royal Exchange Assurance Corporation* [1900] 2 Q.B. 214.

(3) *R.* v. *Weisz & Anor.* [1951] 2 K.B. 611.

(4) *Holman* v. *Johnson* Cowp. 343.

CIVIL SUIT.

*A. Mahendran* for the plaintiffs.

*G. Moganasundram* for the defendant.

**Chang Min Tat J.:** In this action the plaintiff company claimed for the repayment of an interest-free loan of $2,500 lent by the plaintiff company to the defendant at the latter's request to enable him to pay for the purchase of shares in the same amount in the plaintiff company. Evidence of the loan was a general cash voucher for $2,500 signed by the defendant in acknowledgment. The defendant made a total denial of the loan and averred that the issue of the shares to him was in consideration of the valuable services rendered by him to the plaintiff company. As for the voucher, the defence was *non est factum*. No objection was taken by the defence as to the legality or enforceability of the loan.

The evidence led clearly established that the company was essentially a one-man show, that of Lim Teik Ho, managing director, who initially owned 550 shares of the 600 shares issued. The capital was advanced entirely by him and partly by reason of this or it might be because of ignorance, the only account books kept were (1) a cash book and (2) a ledger. No bank account would appear to have been opened. The actual cash position of the plaintiff company at any one time was the state of the pocket of the managing director and there was never at any time then or subsequently any possibility of checking the payments. A system of acknowledgement by signed vouchers was in use but in the absence of any bank account or proper cash account, the veracity of the vouchers could not of course be ascertained. In this connection, it was pertinent to note that the 9 cash vouchers for alleged payments P.11 A, B & C of allowances for January, 1964, P.11 D, E & F of allowances for February, 1964, and P.11 G, H & I of allowances for March, 1964 in each case paid at the end of the month to Lim Teik Ho, one S. Rasiah and the defendant were serially numbered 12 to 20 — an indication, in my mind, of falsification.

Then, the mine was a new one. Its prospects were a matter of grave uncertainty. The company was a private limited one, in the entire control of one person. Under all these circumstances, for the plaintiff company to assert that anyone would ask to purchase shares in the